

IN THE MATTER OF

FRANCIS J. & DONNA M.  
QUIRUS

Petitioners

: BEFORE THE  
:  
: HOWARD COUNTY  
:  
: BOARD OF APPEALS  
:  
: HEARING EXAMINER  
:  
: BA Case No. 08-0044V

.....  
**DECISION AND ORDER**

On October 6, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Francis J. and Donna M. Quirus ("the Petitioners") for a variance to reduce the 100-foot record plat setback to 64 feet for a deck in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations")

The Petitioners provided certification that notice of the hearing was advertised and that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Francis J. and Donna M. Quirus testified in support of the petition. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 5453 Hunting Horn Drive, is located in the 1<sup>st</sup> Election District. It is identified on Tax Map 31, Grid 20, as Parcel 423, Lot 4 (the "Property"). It is part of the Montgomery Meadows, Section 1, Area 1 subdivision.

2. The generally rectangular shaped Property is located on the southwest corner of the Hunting Horn intersection with MD 103. It is 18,702 square feet in area. The curving front (northerly) lot line is about 110 feet wide with an additional angled easement section restricting vehicle access. The rear lot line is about 85 feet wide. The MD 103 (easterly) lot line is about 165 feet deep, the westerly lot line, about 180 feet deep.

3. The Property is improved by a two-story single-family detached dwelling and attached two car garage sited about 11 feet from the westerly lot line, and 98.3 feet from the rear lot line. As shown in Petitioners' Exhibit 1, a series of photographs, numerous mature evergreen trees line the MD 103 and rear lot lines. Several mature trees dot the front and side lawns. There is also additional landscaping along the front yard near the concrete driveway.

4. According to the record plat attached to the petition, the Property was created through resubdivision in 1988. At that time, Section 106.F.1 of the Zoning Regulations imposed a 100-foot rear setback.

5. Owing to the shallowness of the buildable area, the then Office of Planning and Zoning ("DPZ") approved an administrative adjustment (No. 92-118) in 1992 to permit the dwelling to extend about two feet into the rear setback, as is noted on the location survey attached to the petition.

6. The Petitioners are seeking a variance to reduce the 100-foot setback to 64 feet for a two-level deck. The 15' x 20' upper deck will be accessed from an existing door on the second story. Steps lead to the lower deck, which will about 16' x 17' feet in area.

### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar

topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

Although it may have been possible to build the deck to the side of the dwelling without a variance, to do so would threaten the health of the mature trees dotting the lawn, and possibly result in their destruction. Consequently, I find that the lawn and side boundary trees are a unique physical condition causing the Petitioners practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a(1).<sup>1</sup>

The deck addition will be used for a permitted purpose and will not change the nature or intensity of use. Petitioners' photographic Exhibit 1 evidences that decks are commonplace in the subdivision. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair

---

<sup>1</sup> In so concluding I follow the Court of Appeals decision in *McLean v. Soley*, 270 Md. 208, 210, 310 A.2d 783 (1973), wherein the Court implicitly acknowledged that the granting of a variance to prevent the destruction of trees is a "close case"; i.e., it meets the uniqueness requirement, but only just. Such conclusions are extremely rare, as they should be.

the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

2. The practical difficulty of strict compliance with the rear setback arises from the location of trees on the lot, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

3. Under the current Zoning Regulations, the Petitioners would not need a variance because the deck would be constructed a distance of 36 feet from the rear lot line. The current rear setback for a principal is 30 feet (Section 108.D.c(1)(c)(i)) and the Supplementary Regulations (Section 128) permit decks to extend ten feet into the setback. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this 20<sup>th</sup> day of October 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Francis J. and Donna M. Quirus for a variance to reduce the 100-foot record plat setback to 64 feet for a deck in an R-20 Zoning District is **GRANTED**.

**Provided, however, that:**

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
**Michele L. LeFaivre**

**Date Mailed:**

10/22/08

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.